

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 659 of 1986

Date of decision: 24-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
J. G. PATEL

VS

STATE OF GUJARAT & ANOTHER

-----  
Appearance:

Mr. P. V. Hathi for the petitioners

Mr. S.R. Divetia for respondents No.1,2 and 3.  
-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/97

## ORAL JUDGEMENT

Heard the learned counsel for the parties.

There are three petitioners in this special civil application. Petitioners No.1 and 2 are working as Additional Assistant Engineer, and petitioner No.3 is working as Junior Scientific Assistant (an equivalent cadre). All the three petitioners at the time of initial appointment were holding the qualification of diploma in civil engineering. During the service the petitioners have passed degree examination. The Gujarat Public Service Commission vide its advertisement No.12 invited application for recruitment to fill up 1000 posts of Assistant Engineers (Civil)) in G.S.E. Class II service, for the Irrigation Department. The last date for receipt of the applications was 30th November, 1984. In response to the said advertisement, it is not in dispute that only petitioner No.1 had applied and petitioners No.2 and 3 have not applied. Vide letter dated 9th April, 1985 petitioner No.1 was informed by G.P.S.C. that he has not been selected for the interview on account of being not within the prescribed age limit. Hence this special civil application by the petitioners before this Court.

2. This petition was admitted on 14th February, 1986 and interim relief in the following terms was granted:

"Interim relief to the extent that one post shall be kept vacant and even if that is required to be filled in, that should be subject to the result of the petition."

This petition was ordered to be heard along with special civil application No.3780 of 1983. Special civil application No.3780 of 1983 has already been decided by this Court and the judgment is reported in 1992 (2) GLR 1028. The contention of the petitioners in this special civil application as well as the petitioner in the aforesaid special civil application was identical. Shelter has been taken of proviso to Rule 8(5) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. The respondents contended that this proviso is of little help to the petitioner as the minimum qualification for appointment to the post of Additional Assistant Engineer is only Diploma and not Degree, whereas the qualification for appointment on the post of Assistant Engineer is Degree. So relaxation in the age as provided in proviso 2 to sub-rule (5) of Rule 8 of the aforesaid Rules is not available to petitioner No.1.

3. It has next been contended that petitioners No.2 and 3 have not even applied for the post and as such this writ petition on their behalf is wholly misconceived. When they have not chosen to apply for the post how they can file this writ petition and pray for direction to the respondent Commission to consider their case for relaxation of the age eligibility prescribed under the Rules, 1967. The second contention of the counsel for the respondents deserves acceptance. Petitioners No.2 and 3 have not applied for the post and as such none of their legal or fundamental right can be said to be infringed. Petitioners No.2 and 3 have no locus standi in the matter to file this special civil application. So far as petitioner No.1 is concerned, the counsel for the petitioner contended that this matter is squarely covered by the decision of this Court in the case reported in 1992(2) GLR 1028. However, this matter has to be considered by the G.P.S.C. in the light of the decision of this Court aforesaid.

4. In the result this special civil application is allowed. The letter dated 9th April, 1985 of G.P.S.C. is quashed and set aside. The Gujarat Public Service Commission is directed to decide the matter afresh regarding the age eligibility of the petitioner in the light of the decision of this court reported in 1992(2) GLR 1028. The matter should be decided within a period of three months from the date of receipt of certified copy of this order, after hearing the petitioner if he so desires. In case the petitioner No.1 is found within age limit and selected for the post by the Commission, then he shall be entitled to all the consequential benefits flowing therefrom. Special civil application of the petitioners No.2 and 3 is dismissed. Rule discharged. The Special civil application of the petitioner No.1 is allowed and rule made absolute in aforesaid terms. No order as to costs.

.....

csm